IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Regular Second Appeal No. 1152 of 2004**
Date of Decision : December 10, 2009

Jagdish Rai

....Appellant

**Versus**

Market Committee, Madlauda and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN**

Present : Mr. Arun Singal, Advocate
for the appellant.

Mr. Amit Sharma, Advocate
for respondents No. 1 and 2.

Mr. H.R. Munjal, Assistant Advocate General, Haryana
for respondent No.3.

**T.P.S. MANN, J.**

After remaining unsuccessful before both the Courts below in his suit for permanent injunction, the plaintiff is now before this Court by way of second appeal preferred under Section 100 of the Code of Civil Procedure.

In his plaint, the plaintiff had averred that plot No.62 situated within the area of New Grain Market, Madlauda was allotted to him in open auction of 1.9.1989 for an amount of Rs.2,12,000/-. The sale consideration was paid by him in installments. It being the corner

plot, the plaintiff purchased the same for a higher amount so as to get the benefit of both the sides, i.e. two roads. He constructed the suit property in the month of January, 1990 in the form of shops, i.e. shops No.62, 62-A, 62-B and 62-C. Three of the shops were under tenancy of different persons who were doing their respective businesses from the said shops and after taking their sales tax numbers. All these facts regarding construction of the suit property in the shape of various shops were in the knowledge of the Market Committee from the very beginning. Even other corner plots/shops in the Market Committee had been divided in many parts according to the convenience of the owners as there was shortage of plots. However, on 22.6.1998, Market Committee, Madlauda issued notice No.368 to the plaintiff requiring him to close the three shops permanently which were opening towards eastern side, besides closing the stair case, within seven days of its receipt. In the event of non-compliance of the notice, the Market Committee threatened to close the same at the expenses of the plaintiff and then to recover the same as arrears of the land revenue. Accordingly, the plaintiff challenged the notice by claiming that the same was illegal, arbitrary, *null* and *void* and not binding upon him as there was no loss or injury to the defendants. Though he had approached the Market Committee by requesting it not to take any action yet his request was not heeded to and hence, he filed the suit for permanent injunction.

The defendants opposed the suit by filing a joint written

statement wherein, apart from taking preliminary objections regarding *locus standi,* cause of action, maintainability and non-service of statutory notice under Section 31 of the Punjab Agricultural Marketing Produce Act, 1961, they stated that shed No.62 was allotted to the plaintiff and the construction over the plot was to be raised according to the terms and conditions of the allotment letter and other rules and regulations of the defendants. The plaintiff did not follow those conditions and raised unauthorised construction over the suit property. No sanction was given by the defendants for carrying out unauthorised construction. Since the plaintiff had raised construction in violation of terms and conditions of the allotment, the defendants issued notice dated 22.6.1998, which was perfectly legal and not arbitrary, as alleged. They, accordingly, prayed for dismissal of the suit with costs.

While non suiting the plaintiff, both the Courts below held that though the plaintiff claimed to have raised construction immediately after allotment of shop in his favour in the year 1990 yet there was no evidence on record in that regard. Neither he produced any map/plan on file nor he produced any document to establish that he had obtained necessary sanction and raised construction in accordance with the same. On the other hand, as per clause 14 of the letter of allotment Ex.P3 no fragmentation of any building site was allowed and, therefore, notice was issued to the plaintiff for having fragmented his shop in four parts, namely, 62, 62-A 62-B and 62-C. Clause 21 of the letter of

allotment required that the plans of construction be first got approved from the then Administrator, Haryana State Agricultural Marketing Board or any such other officer as may be authorised and only then the construction could be raised but the plaintiff failed to show any document from which it could be presumed that he had got the plan approved. Therefore, the defendants were justified in issuing show cause notice to him and, thus, the plaintiff was not entitled to the relief of permanent injunction.

Learned counsel for the parties have been heard and with their able assistance, the records of the Courts below thoroughly perused.

It is not in dispute that plot No.62 was allotted to the plaintiff. As per clause 7 of the allotment letter, the allottee was required to complete the construction of the shop/booth within a period of two years from the date of allotment after getting the plan approved from the Market Committee. Clause 14 of the allotment letter was clear enough that no fragmentation of any building site was allowed. Clause 22 required the allottee not to increase upon or use for any purpose, other than public passage, the covered passage (verandah) in front of or at the side of the building.

Neither in his plaint nor in his deposition as PW1, the plaintiff stated about getting the plans prepared for raising construction

over the shed allotted to him or getting it approved from the concerned authority. In fact, in his cross-examination conducted on behalf of defendants No.1 and 2, he clearly stated that he did not get the plan approved in respect of the shop allotted to him. As such, the construction raised by the plaintiff was an unauthorised one. Though the plaintiff claimed that no objection was raised when he undertook the construction yet it stands mentioned in the notice in question that when the plaintiff had installed three shutters in the shops in question, he was stopped from doing so but later on it had come to the notice of the Market Committee that the said shutters had again been opened. Moreover, as per clause 14 of the allotment letter, the plaintiff was not permitted to go in for fragmentation of the allotted site so as to set up three more shops thereupon apart from using some portion of it for his own business. It is the case of the plaintiff himself that while undertaking the construction it was done in a manner so as to set up more than one shop although his explanation was that it being a corner shop, he could do so as owners of other corner shops were doing the same because of shortage of the plots. Any alleged violation of clause 14 of the allotment letter by some other allottees of corner plots would not give any right to the plaintiff to carry out unauthorised construction by dividing plot meant for one booth/shop into four portions. Similarly, mere issuance of licence in favour of three different firms, who started/continued their respective businesses from the shops

unauthorisedly constructed by the plaintiff on the plot meant for construction of only one shop would not give any right to the plaintiff or those firms to carry on their businesses or to get the unauthorised construction regularised.

The concurrent findings of facts arrived at by the learned Courts below cannot be termed as either perverse or suffering from any illegality or infirmity as they were based upon correct appreciation of the material evidence on the file. Therefore, they cannot be reversed and, that too, in a second appeal, which is maintainable only on some substantial question of law and not otherwise. No substantial question of law, much less the law points, as formulated by the appellant, arises for determination.

The appeal is, therefore, dismissed.

**( T.P.S. MANN )**
**JUDGE**

**December 10, 2009**
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Whether to be referred to the Reporters : **YES / NO**